



December 12, 2001

Ms. Belinda Montoya
Records Clerk
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2001-5797

Dear Ms. Montoya:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156063.

The Rowlett Police Department (the "department") received a request for copies of records of any 9-1-1 calls answered by the department pertaining to a specific address and time period. You have submitted information for our review, and request a decision from this office. We have reviewed the submitted information.

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask this office for a decision *and state the exceptions that apply* not later than the tenth business day after the date of receiving the written request. Further, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) *written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld*, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, *labeled to indicate which exceptions apply to which parts of the documents*. Gov't Code § 552.301(e)(1)(A)-(D), (2). The department failed to state any exception to required public disclosure that might apply to the submitted information. *See id.* § 552.301(b). Additionally, the department failed to provide comments as to why an exception would apply to the submitted information, or mark the information at issue to indicate the applicability of such exception. *See id.* §§ 552.301(e)(1)(A), (2). Thus, the department failed to request a decision as provided by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ). A compelling reason sufficient to overcome the section 552.302 presumption exists where the requested information is deemed confidential by law or implicates a third party's interest. *See* Open Records Decision No. 150 (1977).

We next consider whether the information, Computer Aided Dispatch ("CAD") reports of 9-1-1 calls, is confidential by law.¹ In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, the Attorney General examined the applicability of several confidentiality provisions in chapter 772 of the Health and Safety Code to CAD reports for 9-1-1 calls made to a certain address. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million and governed by subchapter B of chapter 772.. Section 772.218 applies to emergency communication districts for counties with a population over 860,000 and governed by subchapter C of chapter 772. Section 772.318 applies to emergency communication districts for counties with a population over 20,000 and governed by subchapter D of chapter 772. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.*

You do not inform us which subchapter of chapter 772 governs the 9-1-1 emergency district at issue here. Thus, to the extent that the originating telephone number and address of the 9-1-1 caller were furnished by a service supplier, and assuming the emergency communication district here is subject to subchapter B, C, or D of chapter 772, the caller's address and originating telephone number are made confidential by the confidentiality provision in the applicable subchapter and must be withheld from public disclosure under section 552.101. If, on the other hand, the emergency communication district here is not subject to subchapter B, C, or D of chapter 772, or if the information was not furnished by a service supplier, the caller's address and telephone number are not protected from disclosure under the chapter 772 confidentiality provisions. Furthermore, the information is not otherwise confidential by law. *See* Open Records Decision No. 611 (1992) (law enforcement records regarding family violence not generally excepted as matter of law under section 552.101 predecessor statute).

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

In summary, to the extent that the originating telephone number and address of a 9-1-1 caller in the submitted information were furnished by a service supplier, and the emergency communication district at issue is subject to subchapter B, C, or D of chapter 772 of the Health and Safety Code, such address and originating telephone number are made confidential by law and must be withheld from public disclosure under section 552.101 of the Government Code, and the remaining information must be released to the requestor. Otherwise, the information must be released to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

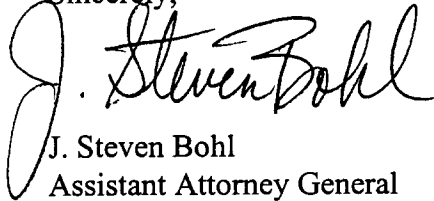
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large, stylized "J" and "B".

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 156063

Enc: Submitted documents

c: Mr. Robert Irving Brodner
419 Barnett Avenue
Dallas, Texas 75211
(w/o enclosures)